IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 666/2004
(Hanuman Mal and Ors. Vs. State of Rajasthan & Anr.)

Date of Order : 25/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. O.P.Mehta for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. K.R.Saran for the non-petitioner No.2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners have challenged the order dated 17.9.2001 passed by Judicial Magistrate, Raisinghnagar (for short 'the trial court' hereinafter) in FR No. 63/98 arising out of FIR No. 154/98 P.S. Raisinghnagar and protest petition filed by the non-petitioner No.2, whereby the trial court took the cognizance of the offences under Sections 452, 457, 458 and 506 IPC. Aggrieved by the order impugned, the petitioners have filed the instant petition.

I have heard learned counsel for the parties.

Carefully gone through the order impugned.

It is contended by the counsel for the petitioners that by order dated 21.4.1999, the Additional Chief Judicial Magistrate, Raisinghnagar accepted the negative final report filed by the police in the said FIR case and dismissed the protest petition. That order came to be challenged by non-petitioner No.2 Dev Kumar before Additional Sessions Judge, Raisinghnagar (for short 'the revisional court' hereinafter) in Criminal Revision No.33/99. The revisional court set aside the order of the trial court and remanded the matter to the trial court with a direction to consider the statements of witnesses produced by the complainant and after hearing the parties decide the matter afresh. However, in the body of the order of the revisional court, it has been observed that prima-facie there is ground to take cognizance for the offences under Sections 452, 457, 458 and 506 IPC. Learned counsel for the petitioners, therefore, contended that because of the order of the revisional court, the trial court without applying its mind independently influenced by the order of revisional court, took the cognizance.

Learned counsel for the non-petitioners supported the order impugned.

Section 398 Cr.P.C. reads as under:-

"Power to order inquiry.- On examining any record

> under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any Subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Section 203 or sub-section (4) of Section 204, or into the case of any person accused of an offence who has been discharged:
>
> Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made."

Thus, while examining the record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate or the Magistrate subordinate to him to make further inquiry in any complaint which has been dismissed under Section 203 or sub-section (4) of Section 204. The operative portion of the order passed by revisional court is in conformity with Section 398 Cr.P.C. The revisional court at no point of time directed the trial court to take cognizance, but on the contrary directed the trial court to reconsider the material including the statements of witnesses produced by the complainant and pass a fresh order and therefore, in compliance of the order of the revisional court, it was for the trial court to reassess and reconsider the material or to make a further inquiry and pass a fresh order. It appears that the trial court was influenced by the order of the revisional court

probably under the impression that the revisional court directed it to take the cognizance, which on perusal of the order of the revisional court does not appear to be so. In the circumstances, therefore, the order passed by the trial court deserves to be set aside and the matter deserves to be remanded to the trial court.

Consequently, the petition is allowed. The order impugned dated 17.9.2001 passed by trial court is set aside and the matter is remanded to the trial court. The trial court is directed to reconsider the entire material including the final report filed by the police as also statements of witnesses produced by the complainant and make a further inquiry and thereafter pass a fresh order in accordance with law. 'Further inquiry' would mean re-consideration of existing material on record.

(H.R.PANWAR),J.

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